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**BY ELECTRONIC FILING**

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Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

**Re:   Petition for Rulemaking of Fibertech Networks (RM-11303)**  
**Comments of Indiana Fiber Works, LLC**

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**TO THE COMMISSION:**

Indiana Fiber Works, LLC ("IFW") is pleased to submit the following comments in support of the petition of Fibertech Networks, LLC ("Fibertech"), requesting the Commission adopt certain "best practices" that address the need for improved competitor access to poles and conduits. As a facilities-based provider of dark fiber that is presently expanding its offerings to include advanced, integrated packages of telecommunications services, IFW has faced repeated barriers to gaining access to essential utility pole and conduit resources. IFW's fiber optic network is principally in Indiana, with smaller sections of its network located in Illinois, Ohio and Kentucky.

The Commission has correctly said in the past that pole attachments are crucial to the development of competition.<sup>1</sup> In the experience of IFW, no pronouncement has ever been more true. In proposing a series of "best practices," Fibertech has effectively described an environment in which ILECs and electric utilities delay the installation of competitive telecommunications facilities and increase the cost of construction. IFW would like to take note that municipally-owned utilities are generally less cooperative than ILECs and investor-owned

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<sup>1</sup> See, e.g., *In re Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report & Order, 13 FCC Red. 6777, FCC 98-20, at ¶ 2 (rel. Feb. 6, 1998).

electric utilities. We make this statement not to suggest that the FCC should impose Fibertech's proposed best practices on municipal utilities; we have been advised of the statutory limitations on the Commission's authority to do so.<sup>2</sup> Rather, we point out that while ILECs and investor-owned utilities still have a ways to go, they generally impose fewer obstacles than municipal utilities, a fact which we attribute to the FCC's history of effective regulation of privately owned utilities that own or control poles, ducts, conduits and rights-of-way. In short, the Commission's regulation policies work. Accordingly, IFW looks to the FCC for assistance in resolving some of the remaining pole attachment problems.

As noted by Fibertech, a number of the best practices it proposes have already been implemented by some utilities, and certain of the proposed best practices have even been endorsed in the Commission's earlier decisions. However, there are hold-out pole owners who reject some of the common sense proposals suggested by Fibertech. Accordingly, IFW submits the following comments in support of Fibertech's petition.

***The Commission should require pole owners to permit use of boxing and extension arms in appropriate circumstances.***

IFW agrees with Fibertech that boxing of poles and use of extension arms can be a reasonable means of adding capacity to utility poles. In IFW's opinion, Fibertech has proposed reasonable criteria for deciding when boxing of poles and use of extension arms should be permitted, and their proposals should be endorsed by the Commission. IFW agrees with Fibertech that boxing of poles and use of extension arms are appropriate when they would render unnecessary a pole replacement or rearrangement of other carriers' facilities. We also agree with the criterion that boxing of poles and extension arms will only be appropriate when facilities on the pole are accessible by ladder or bucket trucks. Moreover, it seems axiomatic that if a pole owner has previously allowed the practice of pole boxing and use of extension arms, then non-discrimination rules should require that new entrants be afforded the same right. IFW notes, as

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<sup>2</sup> See 47 U.S.C. § 224(a)(1) & (a)(3).



suggested by Fibertech's proposed criteria, that there are cases in which extension arms are not appropriate, and if a utility can demonstrate a practical safety or engineering reason why boxing of poles and use of stand-off facilities should not be used in a specific case, then the utility's decision should determine the question.

***The Commission should establish shorter survey and make-ready time periods. The Commission should also require pole owners to allow installation of drop lines to satisfy customer service orders without prior licensing.***

IFW's experiences in regard to survey and make-ready time periods have been similar to Fibertech's. In addition, IFW notes the substantially different time frames for handling its pole attachment applications by the various electric utilities to which it has submitted applications. These differences seem to demonstrate a gap in the degree of support for competition and respect for FCC rules by some utilities. IFW has experienced serious delays involving its applications to one of the principal pole owners in its service area, often exceeding 45 days. This pole owner also charges unreasonable fees for survey work, make-ready work and pole replacements, and has refused to allow survey work to be performed by approved contractors. Due to these practices, IFW has been forced to conclude on several occasions that attachments to this specific utility's poles are not a financially viable alternative. Unfortunately, in that utility's territory, if the expansion project cannot support new construction of underground conduit, then IFW must consider it a lost opportunity for expansion, even though there are existing poles in the area.

A single 45-day time frame for surveying and licensing of attachments is unreasonable for both pole owners and the attaching parties. As an example, IFW takes note of the fact that Fibertech has proposed that prior licensing be eliminated entirely for drop lines.<sup>3</sup> Drop lines usually require attachments to a very small number of poles (often just one), and survey work is usually very uncomplicated. Therefore, Fibertech advances the correct belief that requiring prior

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<sup>3</sup> *In re* Petition of Fibertech Networks, LLC, Docket No. RM-1303, dated Dec. 7, 2005 (the "Fibertech Petition") at 21. Fibertech correctly notes that this proposal has already been endorsed by the FCC. *Mile Hi Cable Partners v. Public Service Co.*, PA 98-003, Order, 15 FCC Rcd. 11450 ¶ 20 (Cable Service Bureau 2000)

licensing before attaching to drop poles would be unnecessary in virtually every case. It is IFW's position that some attachments to mainline utility poles are almost as uncomplicated as drop lines, and a full 45-day waiting period is equally unreasonable. Accordingly, the FCC should take comments from pole owners and attaching parties to establish more flexible guidelines, with the goal of reducing the waiting periods imposed by utilities for small-scale survey projects.

IFW also proposes that time frames for surveys and conducting make-ready work be consolidated. It is our company's belief that internal records searches, field surveys and make-ready work for up to 750 poles should be routinely completed within 90 days.

***The Commission should allow competitors to hire utility-approved contractors to perform field surveys and make-ready work, and should also require that joint users of poles coordinate their approvals of contractors, so that availability and make-ready surveys can be efficiently completed in a single work process .***

IFW strongly agrees with Fibertech that pole owners should be required to engage in some form of pre-approval of contractors for make-ready surveys, and should recognize and accept survey reports prepared by approved contractors. Each utility should maintain its own list of at least three contractors that an attaching party may hire for survey work, with two goals: (a) that the utility have confidence in the survey work product delivered by the contractor; and (b) that attaching parties have as wide a choice of contractors as possible, so as to promote competition and thereby contain the cost of pole surveys and make-ready work. Also, IFW notes from its own experience that the policy of using approved survey contractors expedites the survey process for the utilities that already allow it, eliminating a source of dispute between utilities and attaching parties.

Use of utility-approved contractors for survey work also reduces the occurrences of double-payment. In most cases, an attaching party is not in the position to submit applications for attachment without conducting at least preliminary survey work of its own. Then, as required by most utilities' policies, the attaching party must pay the utility's actual costs of survey work



before approvals are received to begin make-ready work.<sup>4</sup> Therefore, the attacher is forced to pay for redundant survey work (its own preliminary survey plus the utility's office research and field survey), significantly increasing the cost of construction. Moreover, because poles are often jointly used by the electric utility and the ILEC, or because the ownership of the poles may not be clearly established at the time the applications for attachment are submitted, the attaching party may be forced to pay two utilities for survey work, resulting in a double-redundancy.

IFW also agrees that pole owners should allow the use of utility-approved contractors to perform make-ready work. As noted by Fibertech in its petition, the Commission's prior rulings have prohibited pole owners from requiring attaching parties to use the pole owner's workers for make-ready tasks.<sup>5</sup> Given the clarity of the Commission's prior rulings in this regard, it is remarkable that some pole owners continue to resist, although IFW understands that much of the problem arises from concerns over labor contracts with the utilities' employee groups.

***The Commission should require pole owners to allow competitors to search utility records and survey manholes to determine availability of conduit, and limit charges if the utility performs these functions.***

Many pole and conduit owners require that requests for access to facilities be accompanied by an access application form and a processing fee. At the same time, applicants for attachment are usually required to pay a fee for an office records review and field survey. The purpose of reviewing office records is to make a preliminary determination of whether or not structures are available in the areas requested by the attaching party. The field survey is intended to document pole and conduit locations, make a final determination that structures are available for occupancy, assess loading and guying requirements for poles, document the

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<sup>4</sup> See, e.g., GUIDELINES FOR ACCESS TO SBC COMMUNICATIONS INC. AND OPERATING COMPANIES STRUCTURE/SBC-13STATE (SBC Communications Inc., May 13, 2003), available at <http://asac.ameritech.com/guideline.asp> ("ASAC Guidelines").

<sup>5</sup> Fibertech Petition at 20 (citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd. 15499 (rel. Aug. 8, 1996) at ¶ 1182).

adequacy of clearances and provide make-ready notes, and develop estimates of the cost of make-ready work.<sup>6</sup>

Even if a pole or conduit owner has well-established policies (and, unfortunately, many do not), typical problems arise in which the utility fails to complete these tasks within the 45 days allowed by the Commission's rules, or charges fees for these services that exceed reasonable amounts. It is the opinion of IFW that one of the easiest methods of avoiding excessive survey fees and lengthy time frames is to allow attachers to review records and conduct surveys by use of their own independent contractors. This requires contractors to work with utility maps, access copies of utility databases, and usually requires that they work on utility premises. Obviously, pole and conduit owners are entitled to recover their costs of providing such support services to contractors, but the charges need to be reasonable and limited to the utility's actual costs.

***The Commission should require utilities to share building-entry conduit with competitive LECs and cable providers.***

Building entry conduit is critical for competitors. In IFW's experience, Fibertech is accurate in saying that "landlords are extremely reluctant to permit the drilling of additional holes in building foundations to accommodate new conduit."<sup>7</sup> Fibertech's proposed rule is reasonable and should be adopted by the Commission.

In addition, IFW observes that it is not enough to merely require utilities to share building entry conduit. There must be a point at which a competitor accesses the conduit, which ordinarily requires access through a utility manhole close to the building, or cutting into the utility's conduit. In adopting Fibertech's recommendation, the Commission should also address the technical and practical issues of accessing the building entry conduit.

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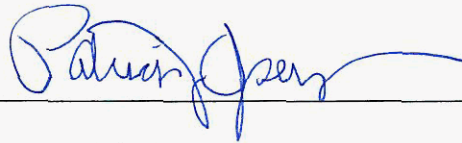
<sup>6</sup> See ASAC Guidelines at § 5.

<sup>7</sup> Fibertech Petition at 35.

In summary, Indiana Fiber Works supports the petition of Fibertech, as set forth in these comments. We hope that the description of IFW's experiences with pole and conduit matters, combined with its comments and suggestions, will help the Commission decide to grant Fibertech's request to initiate a rulemaking proceeding.

Respectfully submitted,

INDIANA FIBER WORKS, LLC



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